



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 27

[AU Docket No. 20-429; DA 22-171; FR ID 73250]

Revised Inventory for Auction of Flexible-Use Licenses in the 2.5 GHz Band; Comment Sought on Upfront Payments, Minimum Opening Bids, and Other Procedures for the Revised Inventory of Auction 108

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; proposed auction procedures.

SUMMARY: The Office of Economics and Analytics and the Wireless Telecommunications Bureau seek comment on the application of procedures governing the conduct of Auction 108 in light of additions to the proposed license inventory for Auction 108.

DATES: Comments are due on or before March 4, 2022.

ADDRESSES: Interested parties may file comments in AU Docket No. 20-429. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Interested parties are strongly encouraged to file comments electronically.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS at <https://www.fcc.gov/ecfs/>.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings in response to the Public Notice can be sent by commercial courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission
- Commercial deliveries (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Dr., Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, or Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

- Until further notice, the Commission no longer accepts any hand or messenger delivered filings.

This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.

- *Email:* Commenters are asked to also submit a copy of their comments and reply comments electronically to the following address: auction108@fcc.gov.

FOR FURTHER INFORMATION CONTACT:

Auction Legal Questions: Daniel Habif, Lyndsey Grunewald or Scott Mackoul, (202) 418-0660.

General Auction Questions: (717) 338-2868.

Auction Inventory Questions: John Schauble, (202) 418-0797.

2.5 GHz Band Licensing Questions: Madelaine Maior, (202) 418-1466, or Nadja Sodos-Wallace, (202) 418-0955.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 108 Revised Inventory Public Notice*, AU Docket No. 20-429, DA 22-171, adopted on February 18, 2022 and released on February 18, 2022. The complete text of the *Auction 108 Revised Inventory Comment Public Notice* is available on the Commission's website at <https://www.fcc.gov/auction/108> or by using the search function for AU Docket No. 20-429, DA 22-171, on the Commission's Electronic Comment Filing System (ECFS) web page at www.fcc.gov/ecfs. Alternative formats are available to persons with disabilities by sending an email to FCC504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

I. Introduction

1. By the *Auction 108 Revised Inventory Comment Public Notice*, the Office of Economics and Analytics (OEA) and the Wireless Telecommunications Bureau (WTB) seek further comment on the procedures governing to be used for Auction 108. Specifically, OEA and WTB seek comment on whether any procedures need to be adjusted for all the licenses available in Auction 108 in light of additions to the initial license inventory. OEA and WTB also seek comment on minimum opening bids and upfront payment amounts for the additional licenses. OEA and WTB have updated the listing of county and channel block combinations potentially available for Auction 108 to add or remove certain licenses, and that updated Attachment A file is available at www.fcc.gov/auction/108.

2. On January 13, 2021, the Commission released the *Auction 108 Comment Public Notice*, 86 FR 12146, that sought comment on competitive bidding procedures and various other procedures to be used in Auction 108, in accordance with 47 U.S.C. 309(j)(3). That public notice also described the licenses to be offered in Auction 108 and made available a file listing all county and channel block combinations potentially available for bidding in Auction 108. The Commission noted that the results of the Rural Tribal Priority Window would determine the final inventory, which would be released in advance of the deadline for the submission of short-form applications to bid in Auction 108. On February 9, 2022, OEA and WTB released the *Auction 108 Further Comment Public Notice*, 87 FR 8764, seeking comment on the use of a particular clock auction format for Auction 108.

3. The *Auction 108 Revised Inventory Comment Public Notice* seeks focused input on whether any bidding procedures for Auction 108 as described in those previous public notices should be adjusted or modified in light of the additions to the auction inventory. The *Auction 108 Revised Inventory Comment Public Notice* proposes no changes to the proposed upfront payments, minimum opening bids, or other procedures from those described in the *Auction 108 Comment Public Notice* and the *Auction 108 Further Comment Public Notice*. In light of the limited scope of the *Auction 108 Revised Inventory Comment Public Notice* and comments urging the Commission to move expeditiously to the start of bidding, OEA and WTB provide for a single round of comments by March 4, 2022, with no filing period for reply comments. A subsequent public notice will announce final procedures for Auction 108, including the procedures, terms, conditions, dates, and deadlines for applying to and participating in Auction 108, as well as provide an overview of the post-auction application and payment processes. An updated inventory for Auction 108 will be released prior to the short-form application deadline in Auction 108.

II. Background on Revised Inventory

4. In light of the comments and ex parte filings made in this proceeding raising issues concerning the accuracy of the inventory, WTB staff performed additional geographic information systems (GIS) analysis of existing licenses and prepared a new inventory based on license service area data extracted from the Universal Licensing System (ULS) on February 2, 2022. For purposes of this analysis, a channel block/county combination is considered unavailable, and is therefore not included in

the inventory, if more than 99.9999% of the area within the county is fully encumbered by an existing license for that channel block. In the *2.5 GHz Report and Order*, 84 FR 57343, the Commission determined that any remaining unassigned EBS spectrum will be made available for commercial use via competitive bidding. In order to identify unassigned spectrum, WTB has treated as encumbered any areas calculated to be at least 99.9999% encumbered to avoid computational errors found to have been attributable to rounding when calculating areas as part of its GIS analysis. As a result of this further analysis, and taking into account the information provided by commenters, OEA and WTB have added 189 licenses in 130 counties and removed 370 licenses in 301 counties from the initial Auction 108 inventory. The majority of the changes to the inventory result from further review of the availability of the J guard band (2568-2572 MHz) in Channel Block 2 and further analysis of how canceled, terminated, or expired licenses modified the geographic service areas of active licenses.

5. In addition to reflecting further analysis of the incumbent licenses, the revised inventory also takes into account WTB's actions in the Rural Tribal Priority Window. The Commission established the Rural Tribal Priority Window to provide federally-recognized tribes with an opportunity to submit applications to obtain unassigned 2.5 GHz spectrum in order to foster communications networks in rural Tribal areas. The Rural Tribal Priority Window opened on February 3, 2020, and closed on September 2, 2020. The revised inventory reflects licenses issued based upon Rural Tribal Priority Window applications acted on to date. This inventory does not take into account Rural Tribal Priority Window applications that are pending (i.e., counties that are requested in whole or in part by pending applications are included in this inventory). Potential bidders should be aware that there are counties that would become fully or partially encumbered if certain pending Rural Tribal Priority Window applications are granted.

6. OEA and WTB remind each potential bidder that it is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the potential uses of a license that it may seek in Auction 108, including the availability of unassigned white space in any particular market. In addition to the typical due diligence considerations encouraged of bidders in all auctions, OEA and WTB call particular attention in Auction 108 to potential encumbrances due to existing licenses and the Rural Tribal Priority Window issues, which may impact the licenses available in

Auction 108. OEA and WTB note in particular that there will be a substantial number of licenses in inventory where the amount of unassigned area or frequency that is unassigned is very small. Each applicant should carefully consider these issues and the technical and economic implications for commercial use of the 2.5 GHz band. The Commission makes no representations or warranties about the use of this spectrum for particular services, or about the information in Commission databases that is furnished by outside parties. Each applicant should be aware that a Commission auction represents an opportunity to become a Commission licensee, subject to certain conditions and regulations. This includes the established authority of the Commission to alter the terms of existing licenses by rulemaking, which is equally applicable to licenses awarded by auction. A Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission license constitute a guarantee of business success.

III. Further Comment Sought on Bidding Procedures

7. The *Auction 108 Comment Public Notice* and the *Auction 108 Further Comment Public Notice* sought on procedures for Auction 108, including: auction format; bidding credits for eligible small businesses and rural service providers; bidding credit caps; upfront payments and bidding eligibility; minimum opening bids and reserve prices; activity rules; activity rule waivers and reducing eligibility; and information procedures during the auction. In the *Auction 108 Revised Inventory Comment Public Notice*, OEA and WTB seek comment on whether these procedures need to be adjusted for all licenses in Auction 108 in light of additions to the initial license inventory. OEA and WTB also seek comment on minimum opening bids and upfront payment amounts for the additional licenses in the Auction 108 inventory

8. *Digital Equity and Inclusion.* As part of the Commission's continuing effort to advance digital equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, OEA and WTB invite comment on any equity-related considerations and benefits (if any) that may be associated with the issues discussed in the *Auction 108 Revised Inventory Comment Public Notice*. Specifically, OEA and WTB seek comment on how any bidding procedures for Auction 108 as applied to the new licenses included in the revised inventory may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

IV. Procedural Matters

A. Third Supplemental Initial Regulatory Flexibility Analysis

9. As required by the Regulatory Flexibility Act of 1980, as amended, OEA and WTB prepared a Third Supplemental Initial Regulatory Flexibility Analysis (Third Supplemental IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in the *Auction 108 Revised Inventory Comment Public Notice* to supplement the Regulatory Flexibility Analyses completed in the *2.5 GHz Report and Order*, *Auction 108 Comment Public Notice*, *Auction 108 Further Comment Public Notice*, and other Commission orders pursuant to which Auction 108 will be conducted. Written public comments are requested on the Third Supplemental IRFA. Comments must be identified as responses to the Third Supplemental IRFA and must be filed by the same deadline for comments specified on the first page of the *Auction 108 Revised Inventory Comment Public Notice*. OEA and WTB will send a copy of the *Auction 108 Revised Inventory Comment Public Notice*, including the Third Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Auction 108 Revised Inventory Comment Public Notice* and Third Supplemental IRFA (or summaries thereof) will be published in the *Federal Register*.

10. *Need for, and Objectives of, the Proposed Rules.* The *Auction 108 Revised Inventory Comment Public Notice* seeks comment on certain procedural rules that may be affected by the new licenses included in the revised inventory for Auction 108, which will auction geographic overlay licenses of unlicensed spectrum in the 2.5 GHz band (2496–2690 MHz). This process is intended to provide notice of and adequate time for potential applicants to comment on these auction procedures. To promote the efficient and fair administration of the competitive bidding process for all Auction 108 participants, the *Auction 108 Revised Inventory Comment Public Notice* seeks comment on the application of auction procedures detailed in the *Auction 108 Comment Public Notice* and the *Auction 108 Further Comment Public Notice* to the new licenses included in the revised inventory.

11. The procedures for the conduct of Auction 108 on which the *Auction 108 Revised Inventory Comment Public Notice* seeks comment constitute the more specific implementation of the competitive bidding rules contemplated by 47 CFR Parts 1 and 27, the *2.5 GHz Report and Order*, and relevant competitive bidding orders, and are fully consistent therewith.

12. *Legal Basis.* The Commission's statutory obligations to small businesses under the Communications Act of 1934, as amended, are found in 47 U.S.C. 309(j)(3)(B) and 309(j)(4)(D). The statutory basis for the Commission's competitive bidding rules is found in various provisions of the Communications Act of 1934, as amended, including 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), 303(r), 304, 307, and 309(j). The Commission has established a framework of competitive bidding rules, updated most recently in 2015, pursuant to which it has conducted auctions since the inception of the auctions program in 1994 and would conduct Auction 108.

13. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small governmental jurisdiction. In addition, the term small business has the same meaning as the term small business concern under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

14. As noted above, Regulatory Flexibility Analyses were incorporated into the *2.5 GHz Report and Order*, the *Auction 108 Comment Public Notice*, and the *Auction 108 Further Comment Public Notice*. Those analyses described in detail the small entities that might be significantly affected. In the *Auction 108 Revised Inventory Comment Public Notice*, OEA and WTB hereby incorporate by reference the descriptions and estimates of the number of small entities from the previous Regulatory Flexibility Analyses in the *2.5 GHz Report and Order*, the *Auction 108 Comment Public Notice*, and the *Auction 108 Further Comment Public Notice*.

15. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* OEA and WTB do not expect the processes and procedures described in the *Auction 108 Revised Inventory Comment Public Notice* will require small entities to hire attorneys, engineers, consultants, or other professionals to participate in Auction 108 and comply with the procedures ultimately established because of the information, resources, and guidance the Commission makes available to potential and actual participants. For example, OEA intends to make information on

the bidding system available and offer demonstrations and other educational opportunities for applicants in Auction 108 to familiarize themselves with the FCC auction application system and the auction bidding system, consistent with the previously detailed bidding procedures that may be affected by new licenses added to the inventory as described in the *Auction 108 Revised Inventory Comment Public Notice*. By providing these resources as well as the resources discussed below, OEA and WTB expect small entities that use the available resources to experience lower participation and compliance costs. Nevertheless, while WTB and OEA cannot quantify the cost of compliance with the procedures on which they seek comment, they do not believe that the costs of compliance will unduly burden small entities that choose to participate in the auction because the procedures for Auction 108 on which the *Auction 108 Revised Inventory Comment Public Notice* seeks comment are similar in many respects to the procedures in recent spectrum auctions conducted by the Commission.

16. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

17. OEA and WTB have taken steps to minimize any economic impact of the auction procedures on small entities through, among other things, the Commission's potential use of previously detailed auction procedures under the revised inventory. The Commission received comments noting discrepancies in the initial Auction 108 inventory that the Commission released with the *Auction 108 Comment Public Notice*. The revised inventory will allow all interested parties, including small entities, to further evaluate the potential procedures for Auction 108 in light of the new licenses included in the revised inventory and provide small entities with information about the available licenses essential to conducting their own due diligence.

18. OEA and WTB have also taken steps to minimize any economic impact of the auction procedures on small entities through, among other things, the many resources the Commission provides potential auction participants. These resources, which are described in detail in the Supplemental IRFA incorporated into the *Auction 108 Comment Public Notice* are provided at no cost and include, for example, access to an FCC Auctions Hotline for information about the auction process and procedures; an FCC Auctions Technical Support Hotline for technical assistance on issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC's auction bidding system; a web-based, interactive online tutorial produced by Commission staff to familiarize applicants with auction procedures, filing requirements, bidding procedures, and other matters related to an auction; the opportunity to participate in a mock auction; and the opportunity to participate in Auction 108 electronically via the Internet. Additionally, eligible small businesses and rural service providers will be able to participate in the bidding credit program for Auction 108, which may lower their relative costs of participation. In the *Auction 108 Revised Inventory Comment Public Notice*, OEA and WTB incorporate by reference the description of the additional steps taken to minimize the significant economic impact on small entities, and significant alternatives considered, from the Regulatory Flexibility Analysis in the *Auction 108 Comment Public Notice* and *Auction 108 Further Comment Public Notice*.

19. These procedures for the conduct of Auction 108 on which the *Auction 108 Revised Inventory Comment Public Notice* seeks comment constitute the more specific implementation of the competitive bidding rules contemplated by 47 CFR Parts 1 and 27, the *2.5 GHz Report and Order*, and relevant competitive bidding orders, and are fully consistent therewith.

20. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

B. Deadlines and Filing Procedures

21. Pursuant to 47 CFR 1.415(d) and 1.419, interested parties may file comments on or before the date indicated on the first page of the *Auction 108 Revised Inventory Comment Public Notice*, in AU Docket No. 20-429. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

22. *Ex Parte Requirements.* This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte

presentations must file a copy of any written presentations or memoranda summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine Period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to the Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with 47 CFR 1.1206(b). In proceedings governed by 47 CFR 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Federal Communications Commission.

William Huber,

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